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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ARNOLD SIMON

on Habeas Corpus.

G043034

(Super. Ct. No. 04D000159)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to challenge an order of the Superior Court of Orange County, Kim R. Hubbard, Judge. Petition granted.

Law Offices of William J. Kopeny and William J. Kopeny for Petitioner.

Christopher Celentino, John P. Cooley, Duane Morris; Niddrie, Fish & Buchanan and Martin N. Buchanan for Real Party in Interest.

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Petitioner Arnold Simon seeks a writ of habeas corpus to stay and, ultimately, to quash imposition of his jail sentence for contempt of court. The trial court sentenced petitioner to jail for not paying spousal support in a long-running family law case. The parties have now entered into a global settlement of the underlying dispute and real party has agreed to withdraw all opposition to the petition for writ of habeas corpus. The parties have stipulated to the issuance of a writ granting petitioner's requested relief.

The trial court's contempt order does not reflect whether the nature of petitioner's contempt was civil or criminal in nature (see, e.g., *Morelli v. Superior Court* (1969) 1 Cal.3d 328, 333) and, in light of the ambiguity, we must construe the uncertainty in petitioner's favor (e.g., *In re Marcus* (2006) 138 Cal.App.4th 1009, 1015), i.e., that he faced imprisonment for civil contempt. In a civil contempt proceeding, the person imprisoned must be released upon compliance with a court order designed to coerce party compliance because the basis for imprisonment as a coercive measure evaporates. (See *Penfield Co. v. Securities and Exchange Commission* (1946) 330 U.S. 585, 592.) The coercive intent and effect of the court's jail sentence are manifest. Given the parties' settlement of all issues, including the support issues that prompted real party to cite petitioner for contempt for unpaid support, we find no obstacle to vacating the order sentencing petitioner to a jail term to be served on weekends. (See Code Civ. Proc., § 128.) Reversal, or in this case granting the writ, does not implicate the interests of nonparties or the public (*id.*, subd. (A)), nor does it pose an undue danger of eroding public trust in judgments or court proceedings, nor of discouraging settlement (*id.*, subd. (B)). Consequently, we grant petitioner's request for relief from the jail term imposed as a consequence of the trial court's contempt findings.

DISPOSITION

The stay previously issued in this matter is dissolved. The petition for writ of habeas corpus is granted, and the trial court is ordered to vacate the sentencing order. No costs are awarded in this proceeding.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.